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APPLICATION FOR PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705(d)

Applicants	:	Goddard, Audrey et al.
Patent No.	:	7,435,798
Issued	:	October 14, 2008
For	:	ANTIBODIES TO A POLYPEPTIDE ENCODED BY A NUCLEIC ACID OVEREXPRESSED IN NORMAL STOMACH, NORMAL SKIN AND KIDNEY TUMOR
Examiner	:	DUFFY, PATRICIA ANN
Conf #	:	1060

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

After review of the file history and Image File Wrapper (IFW), Applicants hereby submit this Application for Patent Term Adjustment (PTA) to correct the Office's PTA calculation of 437 days. The above-referenced patent issued on October 14, 2008, and therefore this application under 37 C.F.R. § 1.705(d) is timely filed within two months of the issue date.

Applicants submit they are entitled to a longer period of patent adjustment under 35 U.S.C. § 154(b) in light of the decision in *Wyeth v. Dudas*, No. 07-1492 (JR) (D.D.C. Sept. 30, 2008), and request that the Office recalculate Applicants' PTA in accordance with that ruling.

Applicants believe the available PTA to be **858 days** based on the following facts:

1. Applicants believe they are entitled to **437 days** of PTA under **35 U.S.C. § 154(b)(1)(A)**. This provision provides a one-day extension of patent term for every day that issuance of a patent is delayed due to enumerated prosecution delays by the Office (hereinafter, "prosecution delays"). Applicants' PTA calculation under 35 U.S.C. § 154(b)(1)(A) is represented in the table below.
2. The Office's PTA determination listed on the face of the patent does not properly account for the days of PTA under 35 U.S.C. § 154(b)(1)(B), however. Applicants

submit that, in light of *Wyeth v. Dudas*, they are entitled to an additional **421 days** of PTA under **35 U.S.C. § 154(b)(1)(B)**, for the Office's failure to issue a patent within three years of its application filing date. Section 154(b)(1)(B) provides a one-day extension for every day greater than three years after the application filing date that it takes for a patent to issue ("issuance delay"), subject to some limitations. One such limitation is the filing of an RCE, because the § 154(b)(1)(B) patent term adjustment calculation does not include any time consumed by continued examination of the application requested by the applicant. 35 U.S.C. § 154(b)(1)(B)(i). Thus, the applicable time period to determine Applicants' § 154(b)(1)(B) PTA is the day after the date that is three years after Applicants' application filing date, May 3, 2005, to the date Applicants filed an RCE, June 28, 2006.

3. The § 154(b)(1)(B) PTA period, May 3, 2005 to June 28, 2006, encompasses 421 days. Under *Wyeth*, this 421-day delay should be reduced by any overlapping "prosecution delay" days that also occurred in this period. In this case, however, there are no "overlapping days," because the Office's 437-day delay in issuing a Non-Final Action after the application filing date occurred *before* May 3, 2005, the start of the § 154(b)(1)(B) PTA "issuance delay" period. Thus, Applicants submit they are entitled to 421 days of "issuance delay."
4. Under *Wyeth*, the proper patent term adjustment is the sum of non-overlapping "prosecution delays" and "issuance delays," minus any Applicant delay. Thus, Applicants submit they are entitled to the sum of 656 days of "prosecution delay" and 421 days of "issuance delay," minus 219 days of Applicant delay, for a **total patent term adjustment of 858 days**.

Applicants' PTA calculation is as follows:

Actions Under 35 U.S.C. § 154(b)(1)(A)		Delays		
Initial	Responsive	PTO	App	Over
5/02/2002 Filing Date	3/24/2005 Non-Final Office Action	631		
3/24/2005 Non-Final Office Action	6/27/2005 Response After Non-Final Action		3	
6/27/2005 Non-Final Office Action	10/27/2005 Response After Non-Final Action		122	
1/27/2006 Final Office Action	6/28/2006 Request for Continued Examination (RCE)		62	
7/18/2007 Request for Continued Examination (RCE)	12/13/2007 Final Office Action	25		

12/13/2007 Final Office Action	4/14/2008 Request for Continued Examination (RCE)		32	
	Actions Under 35 U.S.C. § 154(b)(1)(B)	PTO	App	Over
5/7/2005 3 Years from Filing Date	11/20/2006 Request for Continued Examination (RCE)	421		
	Actions Under 35 U.S.C. § 154(b)(1)(A) and (B)			Delay & Overlap
Totals	PTO Delays	1,077		
	Applicant Delays		219	
	<i>Period of Overlap</i>			0
	Patent Term Adjustment			858

The present application is not subject to a terminal disclaimer.

Applicants hereby request that the Office correct the calculation of PTA to reflect 858 days.

The \$200 fee prescribed by 37 CFR 1.18(e) is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 15, 2008

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